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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1854

ROBERT DUVAL ROGERS,
Petitioner,

vs.

MRS. MINNIE CORNELIA ROGERS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT

After a careful study of *Haddock* v. *Haddock*, 201 U. S. 562, 50 L. Ed. 867, 26 S. Ct. 525 and *Williams* v. *North Carolina*, 317 U. S. 287, 87 L. Ed. 279, Petitioner finds that *Haddock, supra*, was not overruled in its entirety as claimed by Respondent. This Court held in the *Williams* case, *supra*, that the full faith and credit clause of the Federal Constitution requires extraterritorial recognition of the validity of a divorce decree obtained in accordance with the requirements of procedural due process in a state by a spouse who, under the law of such state, had acquired a bona fide domicile there, although the spouse who remained in the state of matrimonial domicile did not appear in the divorce

suit and was not served with process in the state in which the divorce was granted.

Mr. Justice Douglas delivering the opinion of the Court in *Williams, supra*, at page 290, 87 L. Ed. said:

> ". . . There is but one respect in which this Court can, within its traditional authority and professional competence, contribute uniformity to the law of marriage and divorce, and that is to enforce respect for the judgment of a state by its sister states when the judgment was rendered in accordance with settled procedural standards. As the Court's opinion shows, it is clearly settled that if a judgment is binding in the state where it was rendered, it is equally binding in every other state. This rule of law was not created by the federal courts. It comes from the Constitution and the Act of May 26, 1790, c. 11, 1 Stat at L 122, 28 USCA 687. Congress has not exercised its power under the Full Faith and Credit Clause to meet the special problems raised by divorce decrees. There will be time enough to consider the scope of its power in this regard when Congress chooses to exercise it. . . ."

Undisputed Facts

The parties herein were bona fide residents of the State of Alabama and domiciled in Baldwin County, and had been for approximately six years prior to the filing of the petition for divorce.

In *Williams* v. *North Carolina*, 325 U. S. 226, 89 L. Ed. 1577 (1945) Mr. Justice Murphy in a concurring opinion at page 1587, 89 L. Ed. wrote:

> "While I join in the opinion of the Court, certain considerations compel me to state more fully my views on the important issues presented by this case.

The State of Nevada has unquestioned authority, consistent with procedural due process, to grant divorces on whatever basis it sees fit to all who meet its statutory requirements. It is entitled, moreover, to give to its divorce decrees absolute and binding finality within the confines of its borders.

But if Nevada's divorce decrees are to be accorded full faith and credit in the courts of her sister states it is essential that Nevada have proper jurisdiction over the divorce proceedings. This means that at least one of the parties to each ex parte proceeding must have a bona fide domicil within Nevada for whatever length of time Nevada may prescribe.

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*This elementary principle has been reiterated by this Court many times. In *Bell* v. *Bell*, 181 US 175, 45 L ed 804, 21 S Ct 551, this Court held that 'because neither party had a domicil in Pennsylvania', the Pennsylvania court had no jurisdiction to grant a divorce and its decree 'was entitled to no faith and credit in New York or in any other state.' The same rule was applied in the companion case of *Streitwolf* v. *Streitwolf*, 181 US 179, 45 L ed 807, 21 S Ct 553. Referring to these two prior cases as holding that 'domicil was in any event the inherent element upon which the jurisdiction must rest,' the Court in *Andrews* v. *Andrews*, 188 US 14, 47 L ed 366, 23 S Ct 237, repeated that bona fide domicil in a state is 'essential to give jurisdiction to the courts of such state to render a decree of divorce which would have extraterritorial effect.' The Andrews Case made it clear, moreover, that this requirement of domicil is not merely a matter of state law. It was stated specifically that 'without reference to the statute of South Dakota and in any event' domicil in South Dakota was

necessary. 188 US at 41, 47 L ed 373, 23 S Ct 237. All of the opinions in *Haddock* v. *Haddock*, 201 US 562, 50 L ed 867, 26 S Ct 525, 5 Ann Cas 1, recognized this principle, with Mr. Justice Brown's dissenting opinion stating that 'the courts of one state may not grant a divorce against an absent defendant to any person who has not acquired a bona fide domicil in that state.' Finally, in *Williams* v. *North Carolina*, 317 US 287, 87 L ed 279, 63 S Ct 207, 143 ALR 1273, the Court acknowledged that the plaintiff's domicil in a state 'is recognized in the Haddock Case and elsewhere (Beale, Conflict of Laws, § 110.1) as essential in order to give the court jurisdiction which will entitle the divorce decree to extraterritorial effect, at least when the defendant has neither been personally served nor entered an appearance.' See also *Atherton* v. *Atherton*, 181 US 155, 45 L ed 794, 21 S Ct 544. . . ."

Petitioner is unable to find where the other authorities cited by Respondent have any bearing in this case. In the case involved, both parties were bona fide residents of Baldwin County, Alabama, and had been for several years prior thereto.

CONCLUSION

Wherefore, Petitioner prays that a Writ of Certiorari issue to the Supreme Court of Mississippi.

Respectfully submitted,

L. PERCY QUINN
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, L. Percy Quinn, Counsel for Petitioner, hereby certify that a true copy of the foregoing Reply Brief to Respondent's Brief in Opposition has been mailed, postage prepaid, to Honorable Bernard W. N. Chill, 1702 Deposit Guaranty National Bank Building, Jackson, Mississippi, and McLaurin & Nicols, 200 Felicity Street, Brandon, Mississippi 39042.

This 12th day of September, 1974.

L. PERCY QUINN